State of Wisconsin
Department of Health and Family Services

Jim Doyle, Governor
Kevin R. Hayden, Secretary

February 20, 2008

TO: Senate Committee on Health, Human Services, Insurance and Job Creation
FROM: Katie Plona, DHFS legislative liaison
RE: Senate Bill 487

Good morning Senator Erpenbach and committee members. I'm Katie Plona, legislative liaison for the Department of Health and Family Services. Secretary Kevin Hayden regrets that he cannot be here himself to testify.

Thank you for the opportunity to testify in favor of SB 487, and thank you for your prompt attention to this legislation. I want to thank Senator Erpenbach, as well as Representatives Moulton, Hixson, Davis and Benedict, for their leadership on SB 487. I also would like to thank Senator Vinehout and more than 60 of her colleagues for sponsoring this legislation.

I am pleased to have with me today two people invaluable to the Department's eHealth efforts. Denise Webb is the program manager for the eHealth Initiative and Beth DeLair is our eHealth legal consultant. Beth was previously the associate general counsel and director of compliance at UW Hospital and Clinics.

Overview
In recent years, discourse in the health care community about how to remove barriers to health information exchange has increased as more and more providers have the technology to share records electronically. Major studies also have estimated that medical errors in the U.S. have resulted in anywhere from 44,000 to 98,000 deaths annually.

Electronic health information exchange is imperative to the future of health care because it has the power to improve health care outcomes for patients in Wisconsin. In turn, improving the quality and safety of how health care is delivered has the power to reduce medical errors, save lives and stem the rise in health care costs.

With that goal in mind, this bill seeks to balance privacy laws with the application of technology innovations to transform the delivery of health care in Wisconsin.

Wisconsin participated in an 18-month national effort with broad stakeholder involvement to assess the security and privacy issues of health information exchange.

In November 2005, Governor Doyle created by executive order the eHealth Care Quality and Patient Safety Board and charged it with developing a five-year plan for statewide adoption of health information technology and health information exchange.

As part of this process, DHFS staff engaged privacy advocates; health information officers; clinical and hospital providers; technology experts; consumers and others in a long and involved

discussion about how to maintain appropriate statutory privacy protections while breaking down barriers to electronic health information exchange.

Recommendations to change portions of Chapters 51.30 and 146 were the result of that effort and are reflected in SB 487 as five statutory changes. In December 2007, the eHealth Board approved these policy recommendations.

A portion of Chapter 51.30 deals with release of sensitive health care information, namely information about mental health, developmental disabilities and alcohol and other drug treatment. A portion of Chapter 146 deals with the disclosure of general health care information.

While SB 487 is not the only thing we need to do to foster electronic health information exchange, it is an essential first step to remove barriers. It will provide physicians and patients with more information – and more reliable information – to make important decisions about what health care treatment is best and safest. Additionally, SB 487 brings Wisconsin law into better alignment with the federal Health Insurance Portability and Accountability Act's (HIPAA) confidentiality and privacy requirements.

Chapter 51.30

I will start with a description of Chapter 51.30. Except under limited circumstances, Chapter 51.30 prohibits the disclosure of mental health, alcohol and other drug abuse (AODA) and developmental disability health care information to providers for treatment purposes unless the patient or the patient's legal representative provides written consent. This requirement is inconsistent with federal law and with other Wisconsin laws governing other types of health care information.

The goal of the 51.30 workgroup was to develop, through a broad-based stakeholder discussion, an agreed-upon set of information covered under s. 51.30 that could be exchanged amongst providers for treatment purposes without patient consent.

Under current law, only certain elements of a patient's treatment record may be released without informed written consent. This includes name; address; date of birth; date of service; diagnosis; medications; allergies; the name of a mental health provider and other relevant demographic information.

Further, these elements may only be released for the current treatment of an individual to health care providers in a "related health care entity," which generally means a clinically integrated care setting or a given health plan. For example, current law would not allow a physician from Dean Clinic to share a patient's health information with a UW physician treating the patient without the patient's written informed consent.

These limitations make the exchange of health care information difficult because, often, the patient's written consent cannot be easily obtained. Physicians need better access to clinical information to make well-informed and quick decisions about the best way to care for a patient. Additionally, Chapter 51.30 is more stringent than federal HIPAA privacy law and Wisconsin

laws governing other types of health care information, which permit disclosure of health care information for treatment purposes without patient consent.

To address these limitations, SB 487 makes two key changes to allow the exchange of information physicians need and to allow the exchange of information to any health care provider who has a need to know without the patient's written consent.

First, SB 487 would remove the within a "related health care entity" requirement so important health care information can be more quickly and easily exchanged electronically with any health care provider who is involved with the patient's care and who needs the information to treat the patient. Under the bill, this exchange could occur regardless of whether the provider is part of the clinically integrated setting or health plan where the patient originally received care.

This is important because patients need health care in emergency situations or for specialty services outside of the facility from which they generally receive care. Often, patients are not available or are not easily able to provide consent for disclosure to a subsequent provider prior to seeing that provider.

With the passage of this legislation, Wisconsin law would continue to require the patient's informed written consent to disclose information other than the specific elements permitted for exchange.

Second, SB 487 would add "diagnostic test results" and "symptoms" to the list of elements that may be exchanged without patient written consent. By allowing this type of information to be shared with providers outside a related health care entity, subsequent providers can have access to information that is important to their assessment and the care of the patient presenting to them.

Physicians have indicated that they want the results from biological diagnostics easily accessible because such information is important for the safety of the patient and is a key element in providing high quality care.

Examples of biological diagnostics include lab tests, EKGs and radiology tests. Some stakeholders expressed concern that psychological or neuropsychological testing not be included in the definition of "diagnostics" because such testing is very sensitive and does not affect the assessment and delivery of clinical care. SB 487 is drafted to address this concern by defining "diagnostic test results" as results of clinical testing of biological parameters, but not the results of psychological or neuropsychological testing.

Symptoms were added because they often are used to describe conditions somewhat different from the diagnosis and can be very helpful. A diagnosis is assigned to a group of symptoms. For example, a diagnosis of flu may be based on symptoms of fever, chills and upset stomach. Sometimes patients present with symptoms, but the symptoms at a given point in time may be inconclusive, but still important for health care providers to know.

For example, a patient may tell a mental health provider that he or she is having trouble sleeping, has a loss in appetite, is agitated from time to time and has low energy. That patient has some

symptoms of depression, but the symptoms may be incomplete for such a diagnosis, and the provider may decide to monitor the patient for further symptoms. When the same person visits a cardiovascular specialist, that provider would benefit from knowing about the symptoms because they apply to more than one diagnosis.

The 51.30 workgroup identified five areas for further discussion and action, including provider training on security and privacy laws, to make sure the changes in this legislation are implemented successfully. We acknowledge these concerns and understand their importance to various stakeholders. Secretary Hayden has committed the Department to work in the coming days and months with our partners on the items in question. However, with that being said, we want to emphasize that the bill before you today represents a balance and that the benefits of this legislation outweigh any potentially adverse risks.

Chapter 146

HIPAA, the federal privacy act, creates many of the same privacy protections at the national level that Wisconsin Statute 146 affords Wisconsin citizens. In some instances, however, compliance with two sets of laws creates confusion and barriers to health information exchange because certain provisions of Chapter 146 are more stringent than HIPAA.

The goal of our efforts on Chapter 146, through conversations with 14 stakeholder groups, was to better align Wisconsin law with HIPAA. More specifically, SB 487 updates Chapter 146 to improve physician relations with patients and families through more reliable communication; to provide physicians and patients with more information for decision-making; and to pave the way for inter- and intra-state electronic health information exchange. SB 487 makes three changes to Chapter 146.

First, Wisconsin law, unlike HIPAA, requires documentation of every disclosure of patient health care records.

Under HIPAA, health care providers do not have to track disclosures for purposes related to treatment (providing and coordinating care); payment (billing for services rendered), health care operations (internal business) or for any disclosure made as a result of a written authorization. HIPAA does require documentation of disclosures for state reporting purposes, such as the Wisconsin cancer registry, and HIPAA provides patients with a right to request an "accounting" of these disclosures.

This provision was identified because it is administratively burdensome, unrealistic and time-consuming and does not provide any apparent benefit to consumers.

eHealth Board member Catherine Hansen, the Director of Health Information Services at the St. Croix Regional Medical Center, said her hospital documents about 12,000 medical record releases per year. During the last five years, Catherine said patients made no inquiries about these releases. You can imagine how much more documentation occurs at even larger facilities like UW.

Additionally, since Wisconsin law regarding documentation of disclosures of patient health information differs from federal law, compliance with both laws is challenging. SB 487 improves Chapter 146's consistency with HIPAA.

Second, Chapter 146 allows health care providers to receive patient health care information without the patient's consent for any purpose related to providing care to the patient other than what is covered under Chapter 51.30. But, it prohibits a health care provider who has received patient health care information from an outside institution from disclosing that same information to a subsequent health care provider.

This prohibition has a significant impact on electronic exchange based on how eHealth systems are configured and how exchange is likely to occur between different exchange models.

For example, under current law, Meriter Hospital could receive health information from UW for a patient and incorporate that information into the Meriter record. Then, if St. Mary's Hospital requests information from Meriter about that same patient, Meriter can only release its "own" information about that patient to St. Mary's and cannot release the UW information. In other words, if a patient's information is originally from UW and is appropriately released to Meriter, Meriter cannot under current law share the information with St. Mary's.

SB 487 removes the prohibition on re-disclosure and allows for re-disclosure for treatment purposes and under other limited circumstances prescribed under current law.

Third, Wisconsin law makes sharing health information with a patient's family, friend or other person involved in the patient's care difficult because it requires the patient's written consent. As mentioned earlier, written consent is often difficult to obtain because the patient is not available or otherwise not capable of providing written consent.

In contrast, HIPAA recognizes that one or more individuals may be "involved in the care of the patient" and creates provisions that make it easier for a health care provider to disclose health care information about that patient appropriate to the level of involvement the individual has with the patient's care.

Right now, when a spouse accompanies a patient to the emergency room, she understandably wants to know what has happened to the patient and what the prognosis and treatment plan are. Similarly, an adult child might be responsible for coordinating care for an elderly parent and may need to know clinic visit dates and times, laboratory tests and results and the need for medications.

To address this situation, SB 487 allows health care providers to disclose health information to a patient's family, friend or another person the patient identifies as being involved in the patient's care under two conditions. The first is if the patient provides informal permission, rather than formal written consent. The second is if the patient is not physically available or physically or cognitively able to grant informal permission, a health care provider would be permitted to use his or her professional judgment to determine whether disclosing the information is in the best

interest of the patient and the patient would otherwise allow the disclosure. These changes better align Wisconsin law with federal law.

Under the proposed change, informed consent would still be required for a health care provider to release copies of health care records to family and friends involved in the patient's care.

Thank you again for the opportunity to testify in favor of SB 487 and share with the committee the reasons why we believe this legislation is essential to allowing electronic health information exchange. We are happy to answer any questions committee members may have.

Attachments:

1. Chart on Chapter 51.30 comparing current law, HIPAA and SB 487
2. Chart on Chapter 146 comparing current law, HIPAA and SB 487
3. Chapter 51.30 workgroup items for further discussion and action
4. eHealth Board membership
5. Chapter 51.30 workgroup membership
6. Organizations interviewed on Chapter 146
7. DHFS SB 487 fiscal note

Disclosure of Treatment Records for Mental Health, AODA, Developmental Disability Services, Wisconsin Statute 51.30

Current State Law	*HIPAA*	*SB487*
Wisconsin Statutes Section 51.30 requires informed consent before disclosure of **treatment records** created in the course of providing services to individuals for mental illness, developmental disabilities, or AODA at a **treatment facility** – Except: * in a medical emergency (undefined); * the following elements in a **related health care entity:**[1] 1. Patient's name 2. Address 3. Date of birth 4. Date of service(s) 5. Diagnosis 6. Medications 7. Allergies 8. Other relevant demographic information 9. Name of mental health provider(s)	Does not require consent except for psychotherapy notes.	Allow disclosure, without consent, of the following information in the 51.30 treatment record to **all** treating providers with a need to know: 1. Patient's name 2. Address 3. Date of birth 4. Date of service(s) 5. Diagnosis 6. Medications 7. Allergies 8. Other relevant demographic information 9. Name of mental health provider(s) **10. Diagnostics (biometrics such as labs not psychological testing)** 11. **Symptoms**

[1] "related health care entity means one of the following:
a. An entity that is within a clinically integrated care setting in which individuals typically receive health care from more than one health care provider.
b. An organized system of health care in which the health care providers hold themselves out to the public as participating in joint arrangement and jointly participate in activities" (s.51.30(4)(b)8g).

Disclosure and Re-disclosure of General Health Care Information, Wisconsin Statute 146

Area	*Current State Law*	*HIPAA*	*SB487*
Documentation	As currently written, Wisconsin Statutes Sections 146.82(2)(d), 146.83(3) require documentation of every disclosure (written, oral, etc.) for every purpose. This is an extremely burdensome standard for providers to meet and takes time away from patient care.	HIPAA requires documentation of disclosure for any purpose except the following: (1) treatment (providing and coordinating care), (2) payment (billing for services rendered), (3) health care operations (internal business) purposes, or (4) for any disclosure made pursuant to a written consent. Examples of disclosures that would have to be documented include, but are not limited to, disclosures made that are required or permitted by law (e.g. mandatory child and elder and adult-at-risk-abuse, and public health reporting), disclosures to law enforcement and coroners, and disclosures for research activities. In essence, HIPAA requires documentation of disclosures outside what a patient would likely consider to be "acceptable" and part of every day business.	Rewrite Wisconsin Statutes Section 146 to mirror 45 CFR 164.528 so as to require limited documentation of disclosures.
Re-disclosure	Wisconsin Statutes Section 146.82(2)(b) requires that when information is disclosed without patient consent, the recipient must keep the information confidential and may not re-disclose it.	HIPAA is silent on re-disclosure.	Delete Wisconsin Statutes Section 146.82(2)(b), and replace it with language that allows disclosure and re-disclosure of general health information without patient consent.
Disclosure to Individuals Involved in the Care or Treatment of the Patient	Wisconsin Statutes Section 146.82 and 146.83 require patient consent to provide written or oral disclosure of health information to individuals involved in the care or treatment of the patient.	HIPPA allows covered entities such as heath care providers to disclose health information to family and friends "involved in the care of the patient." Involved in the care of the patient is defined in HIPAA, but is broadly construed to apply to anyone that might be helping to support a patient through their medical care (physically, financially, mentally, and spiritual). When patient health care information is being disclosed to family and/or friends, HIPAA requires that either the patient agrees or has the right to object to the disclosure, or that the health care provider uses his or her professional judgment and determines that the patient would not object to the disclosure or that the disclosure is in the patient's best interest (a subjective standard). The amount of information disclosed is limited to that person's involvement in the care of the patient.	Rewrite statute to allow oral disclosure of general health information to individuals involved in the care or treatment of the patient with patient agreement (not formal consent). Retain requirements for patient consent to disclose any copy of a patient's medical record.

Chapter 51.30 workgroup items for further discussion and action

(1) **Clarification of 'Provider.'** The workgroup did not reach consensus on whether to statutorily limit which providers may receive 51.30 records for treatment purposes without patient consent.

Some members proposed limiting the types of health care providers that could receive 51.30 records without patient consent to those providers that directly interact with a given patient. Others raised concerns that such a limitation would not be feasible in an electronic exchange environment.

Additional discussion is needed in this area with consideration of: (a) Appropriate sanctions for unauthorized access and disclosure; (b) Regular access audits that are not complaint driven; and (c) Relevant requirements under HIPAA.

(2) **Liability and Penalty for Unauthorized Disclosure.** Wisconsin statutes related to liability and penalty for unauthorized disclosure should be reconsidered in conjunction with the proposed change to s. 51.30. Many workgroup members suggested that this discussion include consideration of penalties/sanctions for inappropriate access and/or disclosure linked to professional licensure (e.g. MD, RN) and as well as institutional licensure.

(3) **Provider Education.** The Workgroup identified the following two related yet separate concerns that could be addressed by enhanced provider training: (a) misunderstandings and misperceptions of applicable privacy laws and regulations on the part of many providers; and (b) the perception that a mental illness diagnosis, rather than presenting symptoms, indicate treatments on the part of many mental health consumers. The workgroup reached consensus on the following:

- Training on all privacy and security standards should be mandated. The training should emphasize Wisconsin law and its interface with federal laws and what can and cannot be shared and when it should include numerous easy-to-understand examples and be available at little or not cost.
- Treating providers should be encouraged to participate in anti-stigma training presented in collaboration with a variety of relevant stakeholders. This training should be developed collaboratively and in accordance with existing evidence-based models.

(4) **Notification.** The workgroup suggested that implementation of this proposed change should be delayed to ensure appropriate advance notification of the public and providers, but did not propose duration of such a delay. Some members suggested that the annual informing of patient rights and a DHFS memo should be considered as possible mechanisms for notification.

(5) **Clarification of s. 51.30.** The workgroup noted that various terms and conditions in 51.30 are not clearly defined, leading to variations in interpretation and application of the law. Thus, in conjunction with the changes currently recommended, the group suggested reconsidering and possibly amending statute 51.30 to better clarify the conditions and types of information intended to be protected by the statute. Clarification efforts should include an assessment of cross-referenced statutes.

Wisconsin
eHealth Care Quality and Patient Safety Board

Chair: **Kevin Hayden**, Secretary, Department of Health and Family Services.

Betsy Abramson, Elder Law Attorney and Consultant.

Christopher Alban, MD, Clinical Informaticist, Epic Systems Corporation.

Bevan Baker, Commissioner of Health, City of Milwaukee Health Department.

Edward Barthell, MD, Executive Vice President, CIO, Infinity Healthcare.

Gary Bezucha, FACHE, CEO, North Central Health Care.

Patricia Flatley Brennan, Professor of Nursing and Industrial Engineering.

Catherine Hansen, Director, Health Information Services, St. Croix Regional Medical Center.

Ravi Kalla, CEO and President, Symphony Corporation.

Don Layden, Executive Vice President, Corporate Development, Metavante Corporation.

Michael L. Morgan, Secretary, Department of Administration.

Lois Murphy, IT Specialist, Veterans Administration.

Candice Owley, RN, President, Wisconsin Federation of Nurses and Health Professionals.

Debra Rislow, CIO and Director of Information Systems, Gundersen Lutheran.

Peg Smelser, Chief Operating Officer, Wisconsin Education Association Trust.

Lon Sprecher, Senior Vice President and COO, Dean Health Insurance.

Justin Starren, MD, PhD, Director, Biomedical Informatics Research Center, Marshfield Clinic Research Foundation.

David Stella, Secretary, Department of Employee Trust Funds.

John Toussaint, MD, President and CEO, ThedaCare.

Hugh Zettel, Director, Government and Industry Relations, GE Healthcare Technologies.

Chapter 51.30 workgroup membership:

Betsy Abramson, Elder Law Attorney/Consultant

Kathy Bretl, Deputy Director, Mendota Mental Health Institute

Ted Bunck, Director, Central WI Center for the Developmentally Disabled

Mike DeMares, Clinical Manager, Waukesha County Department of Health and Human Services

Sue Gadacz, Women's AODA Treatment Coordinator, WI Department of Health and Family Services (DHFS), Bureau of Mental Health & Substance Abuse Services (BMHSAS)

Jay Gold, Senior Vice President, MetaStar

Dianne Greenley (Kit Kerschensteiner), Supervising Attorney, Disability Rights Wisconsin

Shel Gross, Director of Public Policy, Mental Health America of Wisconsin

Carla Jones, Senior Staff Attorney/Privacy Officer, Marshfield Clinic

Lowell Keppel, President-elect, Wisconsin Academy of Family Physicians (WAFP)

Susan Manning, Independent Health Care Consultant

Jeff Marcus, Medical Director, Central WI Center for the Developmentally Disabled

Gloria Marquardt, Privacy Officer, WI Department of Corrections

Kate Nesheim, Agency Coordinator, Wisconsin Association on Alcohol and Other Drug Abuse

Jennifer Ondrejka (Gerald Born), Executive Director, Wisconsin Council on Developmental Disabilities

Kim Pemble, CIO and Vice President, Synergy Health

Teresa Smithrud, Director, HIM/Privacy Officer, Mercy Health System

Matthew Stanford, Associate Counsel, Wisconsin Hospital Association

Susan Turney (Jeremy Levin), Executive Vice President/CEO, Wisconsin Medical Society

Carol Weishar, Director of Medical Information and Transcription, Advanced Healthcare

Michael Witkovsky, Consulting Psychiatrist, DHFS, BMHSAS

Hugh Zettel, Director, Government and Industry Relations, GE HealthCare Technologies

Dan Zimmerman, Policies & Contract Administrator, DHFS, BMHSAS

List of stakeholders who provided comments on proposed changes to Chapter 146:

1. Wisconsin Hospital Association
2. Dane County Health Care Providers Considering Piloting "Care Everywhere," including
    a. Meriter
    b. St. Mary's
    c. Dean
    d. UW-Madison
    e. UWHC
    f. UWMF
    g. GHC
3. AIDS Network
4. Wisconsin Medical Society
5. Advanced Healthcare (Stakeholder in ED Linking Project)
6. Center for Patient Partnerships
7. Care Wisconsin (Formerly Elder Care of Wisconsin)
8. HIPAA COW
9. AHIMA
10. Wisconsin Alzheimer's Association
11. Wisconsin Nurses Association
12. WHIE
13. Domestic Abuse Advocates
14. Wisconsin Coalition Against Sexual Assault

Wisconsin Department of Administration
Division of Executive Budget and Finance

Fiscal Estimate - 2007 Session

☒ Original ☐ Updated ☐ Corrected ☐ Supplemental

LRB Number **07-4043/1**	Introduction Number **SB-487**

Description
Treatment records and patient health care records

Fiscal Effect

State:

☒ No State Fiscal Effect
☐ Indeterminate
- ☐ Increase Existing Appropriations
- ☐ Decrease Existing Appropriations
- ☐ Create New Appropriations
- ☐ Increase Existing Revenues
- ☐ Decrease Existing Revenues
- ☐ Increase Costs - May be possible to absorb within agency's budget
  - ☐ Yes ☐ No
- ☐ Decrease Costs

Local:

☒ No Local Government Costs
☐ Indeterminate
1. ☐ Increase Costs ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenue ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenue ☐ Permissive ☐ Mandatory

5. Types of Local Government Units Affected
☐ Towns ☐ Village ☐ Cities
☐ Counties ☐ Others
☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEGS

Affected Ch. 20 Appropriations

Agency/Prepared By	Authorized Signature	Date
DHFS/ Donna Moore (608) 266-8156		2/14/2008

Fiscal Estimate Narratives

DHFS 2/14/2008

LRB Number **07-4043/1**	Introduction Number **SB-487**	Estimate Type **Original**
Description Treatment records and patient health care records		

Assumptions Used in Arriving at Fiscal Estimate

This bill makes certain changes to current law regarding the release or redisclosure of patient health records.

There will be no fiscal effect on the Department as a result of this bill. This bill is also not expected to have a fiscal effect on county human services or social services departments.

Long-Range Fiscal Implications

Mr, Chairman and members of the Committee: My name is Jay Gold, and I speak in support of SB 487.

I am a physician and an attorney. I serve as Senior Vice President, Chief Medical Officer, and Confidentiality Officer of MetaStar, an independent quality improvement organization in Madison. I also serve on the Board of Directors of the Wisconsin Medical Society, as President of the Dane County Medical Society, as Chair of the state Heart Disease and Stroke Program, and on the faculties of the Medical College of Wisconsin and Marquette Law School. For five years I served as Chair of the Independent Review Board, a gubernatorially-appointed board charged with reviewing the potential uses of physician office visit data.

MetaStar is a 501 (c)(3) public benefit corporation that does not take official positions on proposed legislation. I testify today as to my own personal support of SB 487.

I served on the work group convened by the Department of Health and Family Services to examine the barriers to the exchange of health care information in Wisconsin. I concur in that group's recommendations for changes to Wisconsin Statutes 51.30 and 146.

It is essential to the quality of health care that information be exchanged freely and quickly among those responsible for a patient's care. In the absence of complete information about a patient's condition, diagnostic and treatment determinations may be faulty, with resulting detriment to the patient's health. Where, as often happens, a patient receives care in different facilities that do not have formal relationships with one another, there is a particular risk that those caring for a patient in one facility will not have access to important information that was obtained in another. Statute 51.30 currently writes such obstacles into law.

Informed consent, of course, is essential for allowing patients to direct their health care. But where there is a strong chance that information may be essential to a patient's care, like information about symptoms and test results, the chance of harm to the patient from a written consent requirement outweigh the relatively small chance of harm from the exchange of information. A patient may not be in a position to give written consent. Where such consent can be obtained, obtaining it takes time, and that time may be precious; the needed time may be even greater if staff have questions about the consent and approvals are needed. The proposed changes to 51.30 in the bill under consideration would go a long way toward mitigating such obstacles.

Similar points can be made about the proposed changes to 146. A facility treating a patient may be quite hampered in the absence of information that can be obtained only by redisclosure from another. The time- and labor-consuming burden of documenting all disclosures detracts from the ability to provide optimal patient care with minimal if any patient benefit. And the inability to share health information with those closest to a patient, even when the patient has given express oral consent, not only may deny information to those closest to a patient, but may deny a physician additional important information that those involved in a patient's care can supply.

Indeed, my own recommendation would go even further than this proposed legislation. There is no medical information so trivial that it might not matter enormously to a patient's care. Rather than single out certain kinds of health care information and place special barriers in the way of their exchange, the law should establish reasonable protections for breach or misuse that apply across the board to all such information. But if the legislature is not prepared to go that far, the proposed bill is far superior to current law.

The proposed changes to the law would continue to safeguard patients' basic privacy rights. The best privacy protection is the existence of information systems that ensure that information goes only to those with authorized access and who have a need to know that information. Most current electronic health systems contain such security safeguards. Patients will continue to enjoy privacy protections under HIPAA, under tort law, and under the revised Wisconsin statutes. What SB487 would do is to enable physicians and other health care providers to make determinations that are quicker and based on more complete evidence than is possible under current law. The public clearly will benefit from this change.

1 W. Wilson St., Room 433
PO Box 7851
Madison, WI 53707-7851
Voice: 608-267-3948
Fax: 608-267-7793

Wisconsin Council on Mental Health

February 20, 2008

Hon. Jon Erpenbach, Chairperson
Senate Committee on Health, Human Services, Insurance and Job Creation
State Capitol, Room 8 South
P.O. Box 7882
Madison, WI 53707-7882

Honorable Members
Senate Committee on Health, Human Services, Insurance and Job Creation

Re: 2007 Senate Bill 487

Dear Senator Erpenbach and Honorable Members:

I am writing as Chairperson of the Wisconsin Council on Mental Health regarding Senate Bill 487. I write to underline the importance of this issue. Members of the Mental Health Council struggle with the issue of decreasing protections for the confidentiality of information about mental health services. On the one hand, members recognize that there are potential benefits for all when health providers have ready access to the information they need. On the other hand, less protection of confidentiality will lead to negative health results due to stigma.

The Council invested a great deal of time in these issues due to the Governor's e-health initiative and other proposals in recent years to reduce the protections of confidentiality found in sec. 51.30, Stats.. We heard from numerous consumers across the State who shared their real life experiences. Many told of providers discrediting their symptoms once a history of mental illness was documented. The health of many of these individuals suffered due to their treatment in emergency rooms and by health care providers in other settings. We also know fear of disclosure of mental illness leads some people to avoid treatment.

While members remain concerned about these issues, the Council was able to reach a position regarding recommendations of the 51.30 Workgroup which were incorporated into this bill. However, since the bill was introduced only this week, the Council has not expressed a position on it.

The Council does support the compromise reached by the workgroup with respect to the scope of information that could be disclosed to other health care providers. The workgroup reached an appropriate balance by increasing the information that can be shared without consumer consent to include diagnostic tests and symptoms. The bill reflects that balance.

The Council remains concerned that the workgroup and its committee did not have sufficient time to address the issue of who should receive this information. That

concern would apply to the bill which includes scant limitation on who may receive information about an individual's mental health care.

The bill would remove the requirement that such information be shared only within a "related health care entity." This means that the information could be shared without consumer consent with a "health care provider" as defined in Sec. 146.81(1), Wis. Stats. This list is very long and includes providers such as podiatrists, optometrists, massage therapists, dieticians, etc. Many mental health consumers feel that the list of who may receive information without their consent should be much narrower.

Members of the Council understand that social benefits may accrue due to implementation of electronic information sharing. However, members are concerned that the bill still fails to limit appropriately which health care providers may receive mental health information. The Council continues to believe that any legislation must do so to limit the negative effects on the lives of individuals with mental illness that might accrue due to reduced protection of confidentiality.

The Wisconsin Council on Mental Health, is the body created under state law to, inter alia:

> *" (a) Advise the department, the legislature and the governor on the use of state and federal resources and on the provision and administration of programs for persons who are mentally ill or who have other mental health problems, ... and for other mental health related purposes.*
> * * *
> *" (d) Serve as an advocate for persons with mental illness."*

Sec. 51.02(1), Stats.

The Council is appointed by the Governor to represent the interests of the State, providers and a cross-section of Wisconsin's mental health community.

Very truly yours,

Wisconsin Council on Mental Health

By:
Mike Bachhuber, Chairperson